

JS 44 (Rev. 06/17)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
BRIAN J. MCDONNELL**DEFENDANTS**
NEW JERSEY TRANSIT RAIL OPERATIONS(b) County of Residence of First Listed Plaintiff MONMOUTH
(EXCEPT IN U.S. PLAINTIFF CASES)County of Residence of First Listed Defendant ESSEX
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)
William J. Fox, Esquire
Law Offices of William J. Fox, P.C.
1626 Pine Street, Philadelphia, PA 19103 (215) 546-2477

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:
ADEA**VII. REQUESTED IN COMPLAINT:**☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

FOR THE DISTRICT OF NEW JERSEY — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.Address of Plaintiff: 57 Center Avenue, Leonardo, NJ 07737Address of Defendant: 1 Penn Plaza East, Newark NJ 07102Place of Accident, Incident or Transaction: _____
(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes ☐ No ☒Does this case involve multidistrict litigation possibilities? Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: _____ Judge _____ Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?

Yes ☐ No ☒

2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?

Yes ☐ No ☒

3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?

Yes ☐ No ☒

4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?

Yes ☐ No ☒CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts2. ☐ FELA3. ☐ Jones Act-Personal Injury4. ☐ Antitrust5. ☐ Patent6. ☐ Labor-Management Relations7. ☐ Civil Rights8. ☐ Habeas Corpus9. ☐ Securities Act(s) Cases10. ☐ Social Security Review Cases11. ☒ All other Federal Question Cases
(Please specify) ADEA

B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts2. ☐ Airplane Personal Injury3. ☐ Assault, Defamation4. ☐ Marine Personal Injury5. ☐ Motor Vehicle Personal Injury6. ☐ Other Personal Injury (Please specify)7. ☐ Products Liability8. ☐ Products Liability — Asbestos9. ☐ All other Diversity Cases

(Please specify)

ARBITRATION CERTIFICATION

(Check appropriate Category)

I, William J. Fox, Esquire counsel of record do hereby certify:☒ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;☒ Relief other than monetary damages is soughtDATE: 9/29/17WJ Fox
Attorney-at-Law69898
Attorney I.D.#**NOTE:** A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.**I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.**DATE: 09/29/2017WJ Fox
Attorney-at-Law69898
Attorney I.D.#

CIV. 609 (6/08)

APPENDIX I

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

CASE MANAGEMENT TRACK DESIGNATION FORM

BRIAN J. MCDONNELL	:	CIVIL ACTION
	:	
v.	:	
	:	NO.
NEW JERSEY TRANSIT RAIL OPERATIONS:	:	
	:	

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a case management track designation form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. §2241 through §2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (X)

9-29-2017

Date

William J. Fox

Attorney-at-law

Brian J. McDonnell

Attorney for Plaintiff

(215).546.2477

Telephone

(215) 546.4698

FAX Number

wjf@billfoxlaw.com

E-Mail Address

**UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF NEW JERSEY**

BRIAN J. McDONNELL	:	
57 Center Avenue	:	
Leonardo, NJ 07737	:	NO.
	:	
Plaintiff	:	
	:	
v.	:	
	:	
NEW JERSEY TRANSIT	:	
RAIL OPERATIONS	:	
1 Penn Plaza East	:	
Newark, NJ 07102	:	
	:	
Defendant	:	
	:	

COMPLAINT

1. Plaintiff, Brian J. McDonnell, is 54 years of age, a citizen and resident of the United States and New Jersey and is employed by Defendant as a Senior Quality Control Specialist.

2. Defendant, New Jersey Transit Rail Operations, is a public transportation corporation and maintains its headquarters at the above-captioned address.

3. Jurisdiction over the federal claims is invoked pursuant to 28 USC § 1343, 1331 and 29 USC §§ 626(c)(1), 1140, 29 USC § 1001, et seq. and over the state law claims pursuant to the doctrine of supplemental jurisdiction.

4. A Charge of Discrimination was timely filed against Defendants, alleging age discrimination and retaliation, with the Equal Employment Opportunity Commission and more than 180 days has elapsed since the filing of the charge.

5. This action properly lies in the District Of New Jersey, Civil Division, pursuant to 28 USC §§ 1391(c), 29 USC 1132(e), because the Plaintiff resides and worked for Defendant in New Jersey and Defendant Employer conducts business, has significant contacts in New Jersey

and is subject to personal jurisdiction in New Jersey.

FACTS

6. In 1984, Plaintiff was hired by Defendant and has worked for Defendant continuously since that time.

8. On multiple occasions, Plaintiff has applied for new jobs, promotions and other assignments with Defendant Employer.

9. Since at least 2013, Plaintiff has been denied each such application or request for promotion and/or transfer to a different position. Most, if not all, of these positions included a substantial pay increase.

10. Each of these positions has been filled by workers substantially younger than Plaintiff.

11. Since at least 2013, Plaintiff has complained internally on multiple occasions about being subjected to age discrimination with regard to the terms and conditions of his employment with Defendant Employer.

12. In December of 2016, Plaintiff filed a charge of discrimination alleging that:

- a. he had been denied promotions due to his age; and,
- b. he had been retaliated against when denied for these promotions because he had previously complained to Defendant of age discrimination.

13. At all times relevant, Plaintiff has performed his job duties at or above expectations and was well qualified for the promotions he sought.

14. At all times relevant, Plaintiff engaged in protected activity when he complained of age discrimination to management and employees of Defendant.

15. The failure of Defendant to promote Plaintiff and to deny him pay increases was based on his age and retaliatory in violation of the ADEA and the New Jersey Law Against Discrimination.

16. Any reasons that Defendants had or will articulate for failing to promote Plaintiff and increase his pay are false and constitute a pretext.

17. Defendants' aforementioned actions constitute discrimination and retaliation in violation of the ADEA and the LAD.

18. As a result of Defendant's discriminatory and retaliatory conduct, Plaintiff has lost and continues to lose compensation and benefits from Defendant Employer.

COUNT I - ADEA

19. Plaintiff hereby incorporates by reference paragraphs 1 through 18 of this Complaint as though same were fully set forth at length herein.

20. At all times relevant Plaintiff was well qualified for his position and the jobs he applied for.

21. Since 2013, Plaintiff has been denied each job he has applied for and each opportunity for a promotion and higher pay. At the time of these denials, Plaintiff's age ranged from 50 to 54.

22. On multiple occasions, Plaintiff engaged in protected activity and complained to management that he was being denied promotions and higher wages because of his age. Defendant ignored and failed to respond to Plaintiff's complaints of age discrimination.

23. Any reasons articulated for the failure to promote Plaintiff or pay Plaintiff higher wages are false and constitute a pretext.

24. Substantially younger employees than Plaintiff were offered these jobs and were paid substantially more wages than Plaintiff earns and these younger employees continue to be paid substantially higher pay than Plaintiff.

25. Defendant's repeated refusal to promote Plaintiff and pay him higher wages constitutes retaliation.

26. Plaintiff has no plain, adequate, or complete remedy at law to redress the wrongs alleged and is now suffering and will continue to suffer irreparable injury from his treatment by Defendant unless Defendant is enjoined by this Court.

27. The denial of Plaintiff the aforesaid promotions and higher pay was because of Plaintiff's age, in violation of 29 U.S.C. § 623(a) (1) *et. seq.* and, therefore, entitles Plaintiff to relief.

28. The actions of Defendant constitute willful violations of 29 U.S.C. § 623 and, as such, entitles the Plaintiff to recover liquidated damages.

29. As a result of Defendant's discriminatory and retaliatory conduct, Plaintiff has lost and continues to lose compensation and benefits.

COUNT III - STATE LAW CLAIMS

30. Plaintiff incorporates by reference paragraphs 1 through 29 of this Complaint as though same were fully set forth at length herein.

31. Defendants have at all times material to the foregoing claims acted wilfully and with malice toward Plaintiff. The Defendants knew, or reasonably should have known, that the aforementioned conduct was in violation of the laws of New Jersey and the United States. The Defendants knew, or reasonably should have known, that Plaintiff was subject to discrimination;

yet, Defendants took no action to cease their wrongful conduct and, in fact, committed further acts designed to cover up the patent discrimination against Plaintiff because of his age.

Accordingly, Plaintiff is entitled to compensatory damages.

49. Defendant's aforementioned actions are in violation of the New Jersey Law Against Discrimination.

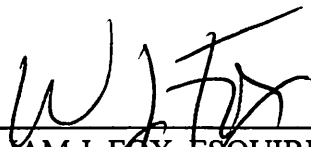
JURY TRIAL

Plaintiff demands a jury trial of twelve jurors.

WHEREFORE, Plaintiff, Brian J. McDonnell, respectfully requests that this honorable Court enter an order providing the following:

- a. That Plaintiff recover from Defendant back pay with interest, front pay, compensatory damages, loss benefits, loss fringe benefits, liquidated damages and such other monetary relief the Court deems just;
- b. That Plaintiff recover from Defendant his costs, including expert witness fees and reasonable attorneys' fees, together with such other remedies as may be provided by law; and
- c. That the Court grant such other relief, including equitable and injunctive relief, as it deems just and proper.

Date: 9/29/17



WILLIAM J. FOX, ESQUIRE
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